By: Senators Ruben, Britt, Forehand, Garagiola, Giannetti, Grosfeld, Hughes, Kelley, Kramer, Lawlah, and Teitelbaum Introduced and read first time: January 31, 2005

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

Drunk and Drugged Driving - Prior Convictions - Penalties and Probation Before Judgment

4 FOR the purpose of prohibiting a court from staying the entry of a judgment and

- 5 placing a person on probation for a subsequent violation of certain alcohol- or
- 6 drug-related driving offenses if the person previously was convicted of or placed
- 7 on probation for certain alcohol- or drug-related driving offenses; providing that
- 8 a prior conviction for certain alcohol- or drug-related driving offenses shall be
- 9 considered a conviction of a certain offense for purposes of imposing certain
- 10 subsequent offender penalties regardless of when the prior offense was
- 11 committed; and generally relating to certain drunk and drugged driving offenses
- 12 and prior convictions.

13 BY repealing and reenacting, without amendments,

- 14 Article Criminal Procedure
- 15 Section 6-220(b) and (c)
- 16 Annotated Code of Maryland
- 17 (2001 Volume and 2004 Supplement)

18 BY repealing and reenacting, with amendments,

- 19 Article Criminal Procedure
- 20 Section 6-220(d)
- 21 Annotated Code of Maryland
- 22 (2001 Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,

- 24 Article Transportation
- 25 Section 27-101(j) and (k)
- 26 Annotated Code of Maryland
- 27 (2002 Replacement Volume and 2004 Supplement)

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2 **UNOFFICIAL COPY OF SENATE BILL 329** 1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 2 MARYLAND, That the Laws of Maryland read as follows: 3 **Article - Criminal Procedure** 4 6-220. When a defendant pleads guilty or nolo contendere or is found guilty 5 (b) (1)6 of a crime, a court may stay the entering of judgment, defer further proceedings, and 7 place the defendant on probation subject to reasonable conditions if: 8 the court finds that the best interests of the defendant and the (i) 9 public welfare would be served; and 10 (ii) the defendant gives written consent after determination of guilt 11 or acceptance of a nolo contendere plea. 12 (2)Subject to paragraphs (3) and (4) of this subsection, the conditions 13 may include an order that the defendant: 14 pay a fine or monetary penalty to the State or make restitution; (i) 15 or 16 (ii) participate in a rehabilitation program, the parks program, or a 17 voluntary hospital program. 18 Before the court orders a fine, monetary penalty, or restitution, the (3)19 defendant is entitled to notice and a hearing to determine the amount of the fine, 20 monetary penalty, or restitution, what payment will be required, and how payment 21 will be made. 22 Any fine or monetary penalty imposed as a condition of probation (4)23 shall be within the amount set by law for a violation resulting in conviction. 24 (5)As a condition of probation, the court may order a person to a term of 25 custodial confinement or imprisonment. 26 (1)When the crime for which the judgment is being stayed is for a (c) 27 violation of § 21-902 of the Transportation Article or § 2-503, § 2-504, § 2-505, § 28 2-506, or § 3-211 of the Criminal Law Article, the court: 29 before imposing a period of probation, may order the (i) 30 Department of Health and Mental Hygiene to evaluate the defendant in accordance 31 with § 8-505 of the Health - General Article; 32 if an evaluation was ordered under item (i) of this paragraph, (ii) 33 shall review the evaluation before imposing a period of probation; and

34 (iii) shall impose a period of probation and, as a condition of the35 probation:

UNOFFICIAL COPY OF SENATE BILL 329 1 1. shall require the defendant to participate in an alcohol or 2 drug treatment or education program approved by the Department of Health and 3 Mental Hygiene, unless the court finds and states on the record that the interests of 4 the defendant and the public do not require the imposition of this condition; and 5 2. may prohibit the defendant from operating a motor vehicle 6 unless the motor vehicle is equipped with an ignition interlock system under § 27-107 7 of the Transportation Article. 8 (2)When the crime for which the judgment is being stayed is for a 9 violation of any provision of Title 5 of the Criminal Law Article, the court shall impose 10 a period of probation and, as a condition of probation, require the defendant to 11 participate in a drug treatment or education program approved by the Department of 12 Health and Mental Hygiene, unless the court finds and states on the record that the 13 interests of the defendant and the public do not require the imposition of this 14 condition. 15 (d) Notwithstanding subsections (b) and (c) of this section, a court may not 16 stay the entering of judgment and place a defendant on probation for: 17 a violation of § 21-902 of the Transportation Article or § 2-503, § (1)18 2-504, § 2-505, § 2-506, or § 3-211 of the Criminal Law Article, if [within the 19 preceding 5 years] the defendant PREVIOUSLY has been convicted under § 21-902 of 20 the Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the 21 Criminal Law Article, or PREVIOUSLY has been placed on probation in accordance 22 with this section, after being charged with a violation of § 21-902 of the 23 Transportation Article or § 2-503, § 2-504, § 2-505, § 2-506, or § 3-211 of the 24 Criminal Law Article; 25 (2)a second or subsequent controlled dangerous substance crime under 26 Title 5 of the Criminal Law Article; or 27 a violation of any of the provisions of §§ 3-303 through 3-307 of the (3)

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 29
 Article - Transportation

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 27-101.

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 (j)
 (1)
 In this subsection, "imprisonment" includes confinement in:

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 (i)
 An inpatient rehabilitation or treatment center; or

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 urpose of participating in an alcohol treatment program that is:

28 Criminal Law Article for a crime involving a person under the age of 16 years.

351.Certified by the Department of Health and Mental36 Hygiene;

4 UNOFFICIAL COPY OF SENATE BILL 329		
1 2 powers and duti	es similar to t	2. Certified by an agency in an adjacent state that has he Department of Health and Mental Hygiene; or
3		3. Approved by the court.
	02(a) of this a	A person who is convicted of a [violation of] SECOND OFFENSE rticle [within 5 years after a prior conviction under that ndatory minimum penalty of imprisonment for not less
		A person who is convicted of a third or subsequent offense under thin 5 years] is subject to a mandatory minimum not less than 10 days.
	902(d) of this a	A person who is convicted of a [violation of] SECOND OFFENSE article [within 5 years after a prior conviction under that andatory minimum penalty of imprisonment for not less
		A person who is convicted of a third or subsequent offense under ithin 5 years] is subject to a mandatory minimum not less than 10 days.
 18 (4) A person who is convicted of [an] A SECOND OR SUBSEQUENT offense 19 under § 21-902(a) of this article [within 5 years of a prior conviction of any offense 20 under that subsection] shall be required by the court to: 		
21	(i)	Undergo a comprehensive alcohol abuse assessment; and
22 23 in an alcohol p	(ii) rogram as orde	If recommended at the conclusion of the assessment, participate ered by the court that is:
24 25 Hygiene;		1. Certified by the Department of Health and Mental
2627 powers and dut	ies similar to	2. Certified by an agency in an adjacent state that has the Department of Health and Mental Hygiene; or
28		3. Approved by the court.
 (5) A person who is convicted of [an] A SECOND OR SUBSEQUENT offense under § 21-902(d) of this article [within 5 years of a prior conviction of any offense under that subsection] shall be required by the court to: 		
32	(i)	Undergo a comprehensive drug abuse assessment; and
3334 in a drug progr	(ii) am as ordered	If recommended at the conclusion of the assessment, participate by the court that is:
35 36 Hygiene;		1. Certified by the Department of Health and Mental

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1 2. Certified by an agency in an adjacent state that has 2 powers and duties similar to the Department of Health and Mental Hygiene; or 3 3. Approved by the court. The penalties provided by this subsection are mandatory and are not 4 (6) 5 subject to suspension or probation. Except as provided in subsection (q) of this section, any person who is 6 (k) (1)7 convicted of a violation of any of the provisions of § 21-902(a) of this article ("Driving 8 while under the influence of alcohol or under the influence of alcohol per se") or § 9 21-902(d) of this article ("Driving while impaired by controlled dangerous 10 substance"): 11 (i) For a first offense, shall be subject to a fine of not more than 12 \$1,000, or imprisonment for not more than 1 year, or both; 13 (ii) For a second offense, shall be subject to a fine of not more than 14 \$2,000, or imprisonment for not more than 2 years, or both; and 15 For a third or subsequent offense, shall be subject to a fine of (iii) 16 not more than \$3,000, or imprisonment for not more than 3 years, or both. 17 For the purpose of second or subsequent offender penalties for (2)18 violation of § 21-902(a) of this article provided under this subsection, a prior 19 conviction of § 21-902(b), (c), or (d) of this article[, within 5 years of the conviction for 20 a violation of § 21-902(a) of this article,] shall be considered a conviction of § 21 21-902(a) of this article. 22 (3) For the purpose of second or subsequent offender penalties for 23 violation of § 21-902(d) of this article provided under this subsection, a prior 24 conviction of § 21-902(a), (b), or (c) of this article, within 5 years of the conviction for 25 a violation of § 21-902(d) of this article,] shall be considered a conviction of §

26 21-902(d) of this article.

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SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effectOctober 1, 2005.